REMARKS

This responds to the office action of 2 October 2006 in which claims 1-17 were pending; claims 1 through 17 were examined; and all of claims 1- 17 were rejected as anticipated by Kramer (US patent 6,216,140). This amendment revises claims 1, 3, 4, 5, 8, 11, and 13 and submits claims 1-17 for reconsideration.

This rejection is respectfully traversed. The Kramer disclosure is not enabling and is not anticipatory per 35 U.S.C 102 (b). Kramer does not disclose the elements of the claimed invasion as required by the law, rules, and regulations applicable to 35 U.S.C 102 (b) rejections. Kramer further does not comply with the requirements of rule 1.83 that requires all elements of the claims to be shown on the drawings. The many inadequacies of Kramer are discussed in subsequent sections of this amendment.

Similarities and differences between the present invention and Kramer.

Kramer and the present invention both relate to the provision of facilities that facilitate the provision of successive versions of a file, directory, program, or folder to be made available as a revised version. The term "program" as used herein comprises a file, a directory, a program, a folder, or any other collection of software that may exist in a first version and then be subsequently revised to a subsequent version. This process is herein referred to as computer software release management.

There are many differences between Kramer and the present invention regarding the disclosure of details of the apparatus and process steps used to achieve the release process. The applicants' invention discloses the details of the apparatus and process steps required to provide a software revision. Kramer discusses no such details. Kramer's disclosure is a block diagram presentation of the before and after versions of his software product. Kramer provides no information that would enable one skilled in the art to practice the Kramer invention without undo experimentation.

The present invention discloses the specific elements and process steps that partially automate a portion of a release process that heretofore required manual

release procedures. The applicants' method and process steps are shown in detail on applicants' figures 2-6. Figure 2 is a high-level block diagram of applicants' claimed invention. Figure 3 is a more detailed block diagram showing the elements used by the applicants to automate a portion of a release process. Figures 5 and 6 are flow charts illustrating the process steps embodying the applicants' invention. The applicants' disclosure illustrates with specificity and particularity the system elements and process steps provided by the applicants as well as how these elements and process steps that automate a portion of a software release process. The applicants' disclosure provides sufficient information to enable one skilled in the art to practice applicants' invention without undo effort or experimentation.

In contrast to applicants' detailed disclosure, Kramer describes before and after versions of his release software. Kramer provides no information regarding how his apparatus and process steps function to provide a revised version of his software. Kraemer only provides block diagrams that, at best, illustrate the results achieved by Kramer. The applicants assert that Kramer is not enabling and does not comply with 35 U.S.C 112. Kramer does not provide sufficient information to one skilled in the art to practice his invention without undue experimentation. Kramer's drawings are the high-level block diagram figures 1 and 2. Kramer's claims 1 - 9 are of the method type and recite the results achieved by Kramer in revising his software. These drawings do not provide information as to how such results are achieved. Some of his claims are directed to a computer readable storage media comprising computer program instructions for achieving his desired results.

The applicants assert that that Kramer does not comply with rule 1.83 which requires that all claim elements be shown on the drawings. Because of this deficiency,

Kramer is not an enabling reference since it fails to meet the requirements of 35 U.S.C 102 (b) rejections.

Response to the 35 U.S.C 102(b) rejections.

A reference can be considered to be anticipatory per 35 U.S.C 102 (b) only if the reference discloses every element of the rejected claims with each element being shown on the drawings of the single reference alleged to be anticipatory. This amendment revises claims 1, 3, 4, 5, 8, 11, and 13 to further distinguish claims 1-17 from Kramer. The present amendment adds a recitation of inventory file element 310 to the amended claims.

Kramer does not anticipate the present invention insofar as Kramer can be understood. Kramer does not disclose the elements recited in applicants' claims 1-17. Applicants' Independent claim 1 discloses details including the newly added software release inventory file element of applicants' system. This structure of claim 1 is not shown by Kramer. Dependent claim 2 is directed to a scan element. Dependent claim 3 is directed to the interaction between a database and the scan element and the newly added inventory file element and the verify element. Dependent claim 5 is directed to the details of applicants' software release information manager. Dependent claim 6 is directed to a second storage area comprising a build storage area. Dependent claim 7 characterizes the types of information that may embody the identified differences of claim 1.

Independent claim 8 recites a method of operating the software release management of claims 1 through 7. Claim 8 also recites the newly added inventory file element. Dependent claim 9 is directed to a recitation of a method of storing information in a database to compare prior information and newly released information. Dependent claim 10 recites the step of installing a copy of released files and directories in a destination storage area. Dependent claim 11 is directed to the step of copying build files into a release area to generate a new release. Dependent claim 12 is directed to the step of copying the released files and directories in a destination area to install a new release of the software product.

Independent claim 13 is directed to a method of operating a software release management system including the newly added inventory of file element. Dependent

claim 14 characterizes the release information stored in a release database. Independent claim 15 is directed to the step of updating information in the release database. Dependent claim 16 is directed to the step of identifying the differences between the billed storage area and the release storage area. Dependent claim 17 characterizes the various types of information that may comprise the differences of claim 16. None of these elements or process steps is shown by Kramer.

Requirements of a 35 U.S.C 102 (b) rejection.

It is respectfully submitted that Kramer fails to anticipate the presently claimed invention since it fails to meet the requirements per 35 U.S.C 102(b) that a reference must possess. A review of section 2131 of the MPEP is instructive. Section 2131.01 states that to anticipate a claim, a single primary reference must teach every element of the rejected claim. Section 2131 further states that a claim is anticipated by a reference only if each and every claim element can be found either expressly or is inherently in a single prior art reference. The well known **every element rule** requires that the identical invention must be shown by the reference asserted to be anticipatory and in complete detail as is contained in the claim being examined. The claimed elements must be arranged in the primary reference as set forth in the rejected claim. Kramer does not meet this requirement since it does not disclose the structural elements and process steps recited in applicants' claims.

Rule 1.83 of 37 CFR states that the drawings of an application must show every feature recited by the claims. CAFC decisions addressing the issue of anticipation require that the prior art must describe or embody the claimed invention in a single reference. The claimed elements must be either inherently or expressly disclosed and must be arranged as in the claim. For anticipation, there can be no difference between the claimed invention and the reference disclosure. The reference disclosure must be understandable and enabling to a person of ordinary skill in the field of the invention.

It is noted that MPEP section 2131.01 III, states that the doctrine of inherency may be used to show an inherent characteristic of the thing being taught by the primary

reference. This portion of the MPEP states that extrinsic evidence may be used to make clear that that the missing descriptive matter is necessarily present in the thing described in the primary reference and that it should be so recognized by persons of ordinary skill. The examiner's rejections indicate that many of the claim elements are not anticipated by Kramer; but that in Kramer "there must exist a component equivalent to the claim elements not recited in the primary reference". This "must exist" logic is used by the examiner rejecting claims 1, 2, 4, and 5. In the rejection of claim 1 the examiner states, in essence, that there "must exist" some component which is equivalent to the claimed "software release information manager". Similarly, in the rejection of claim 2 the examiner states, in essence that, there "must exist" some component equivalent to the claimed "scan" element". The rejection of claim 4 states that, in essence, there "must exist" some component which is equivalent to applicants' verify element. The rejection of claim 5 states, in essence, that there "must exist" some component which is equivalent to applicants' "install element".

The above "must exist" arguments by the examiner do not meet the requirements of the MPEP. The examiner's assertions are nothing more then speculation, conjecture, and hindsight that are devoid of supporting evidence. MPEP section 2131.01 III requires that an examiner's inherency argument must provide evidence that the missing description matter is necessarily present in the thing described in the primary reference. This requirement is ignored by the examiner in his "must be" assertions. MPEP section 2131.01 III requires that an" inherency argument" can be used in a 35 U.S.C 102(b) anticipation rejection only when accompanied by extrinsic evidence that conclusively proves that the primary reference must , inherently possess the claimed elements not shown in the primary reference.

The examiner's rejection of claims 1, 2, 4, and 5 is traversed as being legally deficient since the rejection does not present evidence showing that the primary reference inherently discloses each of the claimed elements. The applicants traverse the examiner's rejections and assert that the primary reference does not inherently disclose the claimed elements that are not specifically shown in the primary reference.

The drawing figures of Kramer are nothing more than high level block diagrams

showing before and after versions of the software elements. Kramer contains no description of the apparatus or methodology used by him to achieve his software changes. The Kramer software changes could be achieved by the use of many different forms of apparatus and/or process steps. Thus it cannot be conclusively determined from a reading of Kramer what elements and process steps he uses in achieving his revised software. Since the Kramer disclosure is lacking such details, the examiner has no basis for asserting that Kramer must inherently disclose the specific elements and process steps recited by the applicants. In other words, the examiner has no knowledge of which, if any, of the applicants' claimed elements "must be" in Kramer.

Kramer is further legally deficient since one skilled in art to which this invention pertains would not be able to determine what elements and process steps to use in practicing the Kramer invention. A reader would be able to determine what Kramer invention achieves, but would not be able to determine without undue experimentation, what elements and process steps must be used in the practice Kramer's invention. Regarding the rejection of claims 1, 3, 4, 5, 8, 11, and 13 it should be noted that each of these claims has been amended to recite an inventory file element that stores information in a second storage area. This amendment should further distinguish these claims from Kramer whether taken explicitly or taken by the doctrine of inherency.

Applicant's claims 1, 8, and 13 are independent. Each of these claims has been amended to recite an inventory file element as above described. The examiner relied upon his "must be" argument in rejecting claim 1. Independent claim 8 was rejected using the same unsupported assertions and conjecture that the claim 8 elements are explicitly disclosed or equivalent to those of disclosed by Kramer. This rejection is without merit since Kramer discloses only high-level block diagrams. This rejection is devoid of probative value since the rejections are unsupported by any evidence of the disclosure of elements comparable to those of claim 8. The same logic which used by the examiner in rejecting independent claim 13. The examiner's rejection of claims 8 and 13 is traversed as being the void of merit and probative value. Applicants' dependent claims were rejected by the examiner using the same flawed methodology of providing no evidence whatsoever to the effect that Kramer discloses the elements of

these claims. Therefore all of the dependent claims should be allowable as being dependent upon and allowable independent claim.

Kramer is not an enabling 35 U.S.C 102(b) reference.

An enabling reference must disclose the applicants' claimed invention in sufficient detail to enable one skilled in the art to practice the invention without undue experimentation. Kramer does not meet this requirement. His disclosure is devoid of information regarding the Kramer apparatus or process steps. One skilled in the art would not understand the Kramer invention and how it functions to generate revised software releases. Kramer contains little, if anything, regarding details of the elements or process steps embodying his invention. This lack of enablement by Kramer precludes the use of his patent as a 35 U.S.C. 102(b) rejection of applicants' claims.

It is respectfully submitted that Kramer is not an enabling reference and does not meet the requirements of 35 U.S.C. 102 (b).
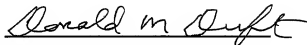
It is respectfully requested that, if the examiner reapplies Kramer in the next office action, that he indicate with specificity and particularity where the elements recited in applicants' claims are shown in the Kramer drawings and are described with specificity and particularity in Kramer. The examiner is respectfully requested to identify where each element or process step of applicants' claims can be found in Kramer's drawings and identified as such. Kramer's disclosure fails to meet the 35 U.S.C 112 written descriptions and enablement requirements.

It is respectfully submitted that applicants' claims 1-17 are not anticipated by Kramer and are allowable over the known prior art.

The Examiner is respectfully requested to call if the prosecution of the application can be expedited by so doing.

Respectfully submitted,

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